THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 4509 of 2007

Dated: 26.10.2007

Between:

Abdul Aziz

... Petitioner

AND

The Greater Hyderabad Municipal Corporation,
Hyderabad, rep., by its Commissioner,
& another.

... Respondents

Counsel for the petitioner : Sri Posani Venkateswarlu

Counsel for respondent No.2 : Sri N. Kodanda Rama Rao
Representing the Standing
Counsel for Greater Hyderabad
Municipal Corporation

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 4509 of 2007

ORDER:-

This writ petition is filed for a writ of mandamus to set aside letter dated 6/9.02.2007 issued by respondent No.1, whereby the petitioner's application for building permit was rejected.

The petitioner claims to be the absolute owner of premises bearing No.6-2-48/3 admeasuring 404 square yards situated at A.C. Guards near Holy High School, Hyderabad. It is the case of the petitioner that on 22.06.1940 the property was allotted to his father by the Captain, Contonment Executive Officer, HEH in Nizam Regular Forces and in the year 1959 the petitioner's father orally gifted the same in favour of the brother of the petitioner by name Abdullah Mohammadi; that the petitioner's brother sold the said property to the petitioner under a registered sale deed dated 09.08.1961; that on 07.02.1966, the petitioner applied for construction of compound wall and the erstwhile Municipal Corporation of Hyderabad (now Greater Hyderabad Municipal Corporation) (for short, 'the Corporation') granted permission on 22.02.1966 for construction of a compound wall. On 15.07.1979, the petitioner claimed that an oral gift was made by him in respect of the said property in favour of his another brother Abdul Sattar and he left for abroad. When the PWD department stated

interfering with the possession of the petitioner's brother, he filed O.S.No.254 of 1983 before the VI Assistant Judge, City Civil Court, Hyderabad for perpetual injunction and the said Court granted a decree on 24.06.1986 in his favour.

The petitioner further contended that on 02.01.1993 when he returned to India, his brother Abdul Sattar
re-conveyed the said property through another oral gift and when the Corporation raised a title dispute, he filed O.S.No.586 of 1995 before the VI Senior Civil Judge, City Civil Court, Hyderabad for declaration of title and for permanent injunction. The said suit was decreed on 13.12.2002.

The petitioner made an application on 14.07.2006 for sanction of building permit for construction of a building on the said land. As the 1st respondent has not considered the said application without a "No Objection Certificate" obtained from the Joint Collector, Hyderabad, he filed Writ Petition No.26654 of 2006 in this Court and the said writ petition was disposed of by order dated 22.12.2006, whereunder the 1st respondent – Corporation was directed to consider the petitioner's application for building permit, without insisting on production of "No Objection Certificate". Thereafter, the respondents issued the impugned letter rejecting the petitioner's application for granting building permit. The petitioner therefore filed the present writ petition questioning the said proceedings.

A counter-affidavit has been filed by the Assistant City Planner, respondent No.2, in which it is *inter alia* stated that as per TSLR there is no premises bearing No.6-2-48/3 either on ground or in record.

The learned counsel for the petitioner submitted that the

plea of the Corporation that as per TSLR record there is no premises bearing No. 6-2-48/3, is wholly specious. He invited my attention to the judgment of the VI Senior Civil Judge, City Civil Court in O.S.No.586 of 1995 and contended that the same plea, which was raised by the respondent – Corporation in the said suit was conclusively rejected by the civil Court and that therefore the impugned order is liable to be set aside.

Sri N. Kodanda Rama Rao, learned counsel representing the learned Standing Counsel reiterated the plea contained in the counter-affidavit that the TSLR record does not show the existence of the premises in respect of which the petitioner is seeking sanction of building permit.

Paragraph 21 of the judgment dated 13.12.2002 in O.S.No.586 of 1995 reads as under:

> "As per the assignment of the door numbers 6-2-48/3 for the suit property, the specific allegation of the defendant is that no such door number was assigned by its. This allegation is proved to be false in the face of Ex.X-5 and Ex.X-6, which are the relevant pages of the Assessment Register of 1965 to 1979 produced by the defendant in pursuance of the direction given by this Court on the application of the plaintiff. The perusal of Exs.X-5 and X-6 would clearly show that the plaintiff is shown as the tax payer for the property bearing No.6-2-48/3."

The plea of the respondents that the premises bearing No.6-2-48/3 is not in existence as per TSLR record is in the teeth of the above reproduced finding of the civil Court in O.S.No.586 of 1995 to which the predecessor of the respondents is a party. It is not in dispute that the said judgment has attained finality as no appeal appeared to have been filed against the same. In view of the same, the rejection of building permit on the ground that there is

no such premises in the TSLR record cannot be sustained.

The writ petition is therefore disposed of. The order dated 6/9.02.2007 is set aside. The respondents shall consider the application of the petitioner for building permit afresh, without relying upon the ground that the premises is not shown in the TSLR record. The respondents shall complete this exercise within a period of four weeks from today.

As a sequel to disposal of the writ petition, WPMP.No.5739 of 2007 filed by the petitioner for interim relief is disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

Date: 26.10.2007
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